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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 4 May, 2022**

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+ W.P.(C) 12846/2021, CM APPLs. 12338/2022, 12440/2022

COBOL TECHNOLOGIES PVT. LTD. Petitioner

Through: Mr. Vijay Aggarwal, Mr. Hardik
Sharma, Mr. Mukul Malik and Mr.
Shekhar Pathak, Advs.

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Kirtiman Singh, CGSC for UOI
Mr. Zoheb Hossain, Sr. Standing
Counsel with Mr. Anish Dhingra,
SPP, Mr. Vipul Agrawal, Mr. Parth
Semwal and Mr. Nakul Ahuja, Advs.
for R-2.

3

+ W.P.(C) 12847/2021, CM APPLs. 14748/2022, 15538/2022

OPTIMA INFRASTRUCTURES PVT. LTD. Petitioner

Through: Mr. Vijay Aggarwal, Mr. Hardik
Sharma, Mr. Mukul Malik and Mr.
Shekhar Pathak, Advs.

versus

UNION OF INDIA & ANR. Respondents

Through: Ms. Nidhi Raman, CGSC with Ms.
Rupali Kapoor, Adv. for UOI.

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+ W.P.(C) 12853/2021, CM APPLs. 15545/2022, 14217/2022

RAMAA ADVISORS PVT LTD Petitioner

Through: Mr. Vijay Aggarwal, Mr. Hardik
Sharma, Mr. Mukul Malik and Mr.
Shekhar Pathak, Advs.

versus

W.P.(C) 12846/2021 & connected matters

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UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Nidhi Raman, CGSC with Ms.
Rupali Kapoor, Adv. for UOI.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. Since these writ petitions raise common questions, they were with the consent of parties taken up for disposal together. For the sake of brevity, the Court notes the reliefs claimed in the lead writ petition being W.P. (C) 12846/2021. Those reliefs read thus:-

a. Issue a Writ, Order or Direction in the nature of a Mandamus or any other appropriate Writ, Order or Direction thereby setting aside the notification dated 08.10.2021 issued by the Ministry of Finance, Government of India, whereby it has extinguished the ability of the existing Member Adjudicating Authority, New Delhi to deliver orders / judgments in the matters in which orders are reserved by appointing a new officer to the post of Member, Adjudicating Authority at New Delhi, for Prohibition for Benami Property Transactions Act, 1988, without providing any time period for him to pass orders / judgments though done earlier in previous notifications, and thereby directing the concerned Member, Adjudicating Authority to (i) pass orders/judgment within a specified time frame (2-3 months) in respect of all cases which he has reserved judgments after hearing arguments, in particular the case of the Petitioner which has now undergone two full rounds of hearing and where judgment has been reserved now for the second time as recently as on 16th September 2021;

OR ALTERNATIVELY

b. Issue a Writ, order or direction including a Writ in the nature of Mandamus and/or Certiorari or any other appropriate Writ, Order or Direction, thereby directing Respondent No. 2 Adjudicating Authority and its concerned officer to pass orders/judgment within a specified time frame (2-3 months) in respect of all cases which have been heard by him and where judgment has been reserved, in particular the case of the Petitioner;

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AND

c. Pass necessary orders and directions thereby laying down guidelines for the Respondent No. 1 that during issuing transfer orders, the same should have a provision that the concerned Authority / Tribunal Member / etc. shall be authorized to pass judgments within a relevant period of time in the matters which have already been reserved for judgment;”

2. When the writ petition was initially entertained, a learned Judge of the Court on 16 November 2021 proceeded to pass the following interim order:-

“5. Issue notice. Ms.Nidhi Raman, CGSC accepts notice. She prays for, and is granted, two weeks’ time to obtain instructions and file a reply, explaining the stand of the respondent as also how this issue can be resolved. In its reply, the respondent will also give a comprehensive list of the matters in which judgment has been reserved by the then incumbent officers holding the post of Member, Adjudicating Authority under the Prohibition Benami Property Transactions Act, 1988.

6. Response thereto, if any, be filed before the next date.

7. In case, before the next date, the matters are once again listed for arguments before the Adjudicating Authority, it will be open for the petitioners to make a request to the said Authority for adjourning the matter to await the outcome of the present petition, which request, if made, will be considered favourably by the Adjudicating Authority.”

3. The grievance of the petitioners essentially is that on more than one occasion the Adjudicating Authority constituted under the Prohibition for Benami Property Transactions Act, 1988 [“1988 Act”] has been transferred out after final hearing of matters had been concluded and orders reserved.

4. From the facts which are disclosed in the writ petition it appears that proceedings against the petitioner in the lead matter commenced in February 2021. Undisputedly pursuant to amendments introduced in Section 7 of the 1988 Act by Finance Act, 2021, the competent authority

under the **Smugglers and Foreign Exchange Manipulators (forfeited of property) Act, 1976** [SAFEMA] was nominated and appointed to act as the Adjudicating Authority under the 1988 Act also. It is the case of the petitioners that in light of the aforesaid statutory amendments which came to be introduced, the matter was re-heard and re-argued before another Adjudicating Authority. The petitioners state that one Mr. Hari Govind Singh who was nominated as the Adjudicating Authority at Mumbai was given additional charge as Adjudicating Authority at New Delhi on account of a vacancy which came into existence. It is their case that the matter was thereafter again heard and orders reserved by Mr. Hari Govind Singh on 16 September 2021. The record further bears out that by a Notification of 27 February 2021, the Ministry of Finance had notified that all matters in which Adjudicating Authorities had reserved judgments should be finalised by 30 September 2021. By a subsequent Notification of 17 September 2021 that period was extended up to 31 March 2022.

5. In the meanwhile and after judgment had been reserved by the Adjudicating Authority, the respondents by a Notification issued by the Ministry of Finance on 1 October 2021 appointed one Mr. Sanjog Kapoor posted at the relevant time as the Commissioner, Income Tax (OSD) in the office of the Principal Chief Commissioner of Income Tax, New Delhi to act as the Competent Authority and Administrator, Delhi under the SAFEMA and the **Narcotic Drugs & Psychotropic Substances Act, 1985** [NDPS]. The said officer by virtue of Section 7 of the 1988 Act also consequently came to be designated as the Adjudicating Authority for the

purposes of the said Act. Undisputedly although judgment had been reserved on the proceedings initiated against the petitioners on 16 September 2021, no orders were pronounced or rendered by the then Adjudicating Authority till the time Mr. Sanjog Kapoor came to be appointed as the Competent Authority under SAFEMA and who by virtue of the provisions made in Section 7, also took over charge as the Adjudicating Authority for proceedings under the 1988 Act. It is at that stage of the proceedings that the instant petition came to be filed.

6. As is evident from the aforesaid recital of facts, the change of the Adjudicating Authority firstly came about by virtue of the statutory amendments which were introduced. Further although the Adjudicating Authority of Mumbai who held additional charge of Delhi had reserved orders on 16 September 2021, no final verdict was rendered prior to appointment of Mr. Sanjog Kapoor in October 2021. From the aforesaid it is manifest that no wrongdoing can be fastened upon the respondents nor can they be held accountable for a failure on the part of the erstwhile Adjudicating Authority to have rendered final judgment prior to the appointment and posting of Mr. Sanjog Kapoor in October 2021.

7. The Court further finds its unable to either countenance or discern an indefeasible right which may be recognised in law as inhering in the petitioners to seek continuance of the authority who had heard the matter on 16 September 2021 despite the appointment of Mr. Sanjog Kapoor in October 2021. Once that officer came to be appointed as the competent authority for SAFEMA, he statutorily and by operation of law also became

the Adjudicating Authority for the purposes of the 1988 Act. Admittedly, the authority who had heard the matter had not rendered judgment prior to 1 October 2021. The consequences which would flow from the appointment which was made on 1 October 2021 could not have possibly been interdicted by any administrative order directing the continuance of the officer who had reserved orders on 16 September 2021.

8. The reliance placed by learned counsel for the petitioners on certain practice directions which this Court follows while effecting transfers of Judicial Officers is noticed only to be rejected. This since the appointment of Mr. Sanjog Kapoor was validly made and in any case does not form subject matter of challenge. The petitioners as noted above cannot not claim any right which may be enforced under Article 226 of the Constitution to seek the continued posting of Mr. Hari Govind Singh notwithstanding the appointment of Mr. Sanjog Kapoor in October 2021. Regard must also be had to the undisputed fact that Mr. Hari Govind Singh was essentially appointed as the Adjudicating Authority to deal with matters placed before the Bench dealing with matters relating to the 1988 Act at Mumbai. He had only been granted additional charge of the Bench at New Delhi. Viewed in that light there was a clear and continuing imperative operating upon the respondents to make a regular appointment of an Adjudicating Authority insofar as the Bench at Delhi is concerned.

9. For all the aforesaid reasons, the Court finds that the challenge raised in the present writ petitions is thoroughly misconceived.

10. They are accordingly dismissed with costs quantified at Rs.50,000/-.

YASHWANT VARMA, J.

MAY 4, 2022/SU

